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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,564	01/03/2001	Hirofumi Sakaue	32405W061	9797

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EXAMINER

STRIMBU, GREGORY J

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 11/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/752,564

Applicant(s)

SAKAUE ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/27/02, 5/7/02 and 8/14/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restrictions

Claims 14-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in Paper No. 10.

Applicant's election with traverse of Group I in Paper No. 10 is acknowledged. The traversal is on the ground(s) that the previous examiner examined all of the claims. This is not found persuasive because there is no evidence of record that the examiner did in fact examine claims 14-16. First, claims 14-16 were presented after the first office action of December 28, 2001 and no subsequent office action was issued by the previous examiner. Additionally, there is no record of the conversation of May 2, 2002 was indeed an interview discussing the merits of the application. Neither the examiner nor the applicant has presented an interview summary stating what transpired during the conversation of May 2, 2002. It is unclear to the examiner why the applicant has not submitted an interview summary detailing what was discussed and agreed to if the conversation of May 2, 2002 was in fact an interview. The requirement is still deemed proper and is therefore made FINAL.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The

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abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because of the legal phraseology "means" on line 7. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites that the gas stay is disposed in parallel with the connecting rod throughout movement of the hinge arm on lines 13-15. It should be noted that the specification does not provide support for the limitation. Additionally, it appears from the drawings that the gas stay and the connecting rod cannot be disposed in parallel. See figure 2 wherein the gas stay 50 and the connecting rod 46 are not in parallel. Also, see figure 3 wherein it would appear that axes of the gas stay 50 and connecting rod 46 would cross when the rear gate 20 is in an open position.

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Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "for pivotal connection with said vehicle body" on lines 6-7 of claim 1 render the claims indefinite because it is unclear if the hinge arm or the rear gate is for pivotal connection with the vehicle body. Recitations such as "manipulator" on line 4 of claim 4 render the claims indefinite because they are missing an article. Recitations such as "said power source" on line 2 of claim 7 render the claims indefinite because it is unclear if the applicant is referring to the power source unit set forth above or is attempting to set forth another power source in addition to the one set forth above. Recitation such as "the rotation" on line 4 of claim 7 render the claims indefinite because it is unclear what element of the invention the applicant is referring to. What element of the invention is rotating? Recitations such as "judges" on line 2 of claim 8 render the claims indefinite because it is unclear what the applicant is attempting to set forth. How does the controller "judge" the fully opened or closed position? Recitations such as "the opening and closing operation" on line 2 of claim 11 render the claims indefinite because they lack antecedent basis. Recitations such as "at which said rear gate is manually operated" on lines 3 of claim 11 are grammatically awkward and confusing. Recitations such as "said control means" on line 3 of claim 12 lack antecedent basis.

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Allowable Subject Matter

Claims 1-13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach a hinge arm for attachment of a rear gate to a vehicle body, a connecting rod that transmits the reciprocating motion to the hinge arm and a gas stay attached to the hinge arm wherein the gas stay and the connecting rod are parallel throughout movement of the hinge arm. See claim 1, lines 6-7, 8-9 and 13-15.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yuge, Dombrowski et al., Rogers et al. and Wright et al. are cited for disclosing an operating mechanism for a rear gate.

Response to Arguments

Applicant's arguments filed August 14, 2002 have been fully considered but they are not persuasive. The applicant's comments regarding the telephone conversation with examiner Cohen on May 2, 2002 are not fully understood because it appears that a portion of the comments are missing. See the bottom of page 2 of the response of August 14, 2002 wherein the last sentence of the page does not end on page 2 and is not continued on page 3 of the response. With respect to the applicant's comments

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regarding giving full faith and credit to examiner Cohen's previous actions, the examiner has given full faith and credit to examiner Cohen's actions. It appears that the applicant is arguing that the examiner should give full faith and credit to a transaction that is not of record. Moreover, it is completely within the applicant's purview to remedy this situation by providing an interview summary of the conversation of May 2, 2002 detailing what was discussed and what specific language places the application in a condition for allowance.

Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



Gregory J. Strimbu
Primary Examiner
Art Unit 3634
November 1, 2002